



April 18, 2005

Ms. Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

*via electronic filing*

**Re: American Cable Association Petition for Rulemaking, RM-11203**

Dear Ms. Dortch:

On behalf of BEVCOMM, I write to express our strongest support for ACA's petition for rulemaking on retransmission consent. I work for an independent telecommunications company that serves video customers in smaller, rural areas, and I can verify that the petition accurately describes the upcoming retransmission consent crisis. Broadcasters, including those in my markets, have made it clear that they will force us to charge an additional \$5 to \$6 per subscriber per month for basic cable, to cover new demands of cash for carriage. ACA's solution to this problem is pro-competition, pro-consumer, and deregulatory. It will benefit the consumers served by my company and will help keep down the costs of basic cable.

Provided below is some information about my company and why we think the Commission needs to grant ACA's petition.

#### **Company background**

Our company is family owned and began providing cable service in 1992 when we bought a small analog system in Minnesota Lake, Minnesota. We have been in the telecommunications business since 1901 as a rural independent local exchange carrier, serving almost 15,000 customers in Minnesota and Iowa. Given the competitive nature of our business, we began plans to deploy video service via VDSL technology early in 2004, and proudly rolled out a video product in New Prague, Minnesota in late December. We now have 300 video subscribers in New Prague, and our subscriber count continues to grow. We are competing with a large and aggressive incumbent – Time Warner – in New Prague. Time Warner also offers what is known in the industry as the Triple Play: voice, video and data.

The investment required to deploy this new video service was and continues to be substantial. Programming costs were more than we anticipated.

Perhaps because we launched video service midstream, I found that obtaining retransmission consent from the local broadcast stations was relatively painless with one lone exception - the local WB affiliate, owned by Sinclair Broadcast Group (hereafter "SBG").

As a condition of obtaining retransmission consent, SBG demanded that we pay 25 cents per subscriber. No other broadcast affiliate or independent channel in the Twin Cities DMA demanded monetary compensation as part of their retransmission consent agreements. Our direct competitor, Time Warner, does not paying monetary compensation to SBG for the right to retransmit KMWB 23 in New Prague. No other video provider in the Twin Cities DMA, to my knowledge, pays monetary compensation to SBG for the privilege of retransmitting their signal. We were not in a position to pay SBG, as several of our other retransmission consent agreements contained Most Favored Nations clauses. If we paid SBG, we would be required to pay several other stations 25 cents per subscriber, which was not in our business model and which would have driven up the cost of providing our new service and placing us at a competitive disadvantage.

During the course of my negotiations with SBG, I pointed out the above facts, and stated that I could not agree to monetary compensation. I was told that SBG would not grant retransmission consent without monetary compensation. I pointed out that KMWB offered our cable system in Minnesota Lake, Minnesota a retransmission consent agreement in the fall of 2002 without a monetary compensation requirement. While I realize that SBG has a right to propose retransmission consent agreements based upon different terms and conditions, including price, SBG only has a right to do so if these different terms and conditions are based upon competitive market conditions.

During my negotiations with SBG, I argued that no such competitive market conditions existed which would allow SBG to extract a per subscriber fee from my company in exchange for retransmission consent. First, our direct competitor, Time Warner Cable, was not paying monetary compensation. Second, no other cable or video service provider in the Twin Cities DMA was paying SBG to retransmit KMWB. Finally, I pointed out that in 1997 SBG signed a landmark 10 year network affiliation agreement with The WB. According to the press release issued by SBG on July 14, 1997, The WB agreed to pay SBG \$64 million for the first 8 years of the agreement. The WB also agreed to pay an additional \$20 million for the last two year of the deal, resulting in a total compensation package of \$84 million. A spokesperson for SBG was quoted in the press release, stating in part: "Sinclair's decision to sign a long term deal with The WB was based upon a number of key elements – its willingness to *fully compensate Sinclair for its distribution system...*". Emphasis added.

Based upon the above described competitive market conditions, or rather, the lack of them, I argued that SBG did not have the right to seek monetary

compensation from BEVCOMM as a term and condition of retransmission consent. I pointed out that by SBG's own admission, they had already been fully compensated by The WB for its distribution system, and to single out a fledgling multi channel video programming distributor like BEVCOMM seemed to smack of bad faith. I also pointed out my concern that SBG was preventing us from offering a competitive service to that of the incumbent, Time Warner Cable, which was by coincidence, along with The WB, a subsidiary of Time Warner Inc.

BEVCOMM offered other terms and conditions other than monetary compensation in an attempt to obtain retransmission consent, all of which were rejected. These other terms included bill inserts promoting KMWB programming, ad insertion once we had the technical capability to do so, the addition of a Most Favored Nations clause so that SBG would be protected should we agree in the future to pay any other broadcast station for retransmission, or make a contribution to a local charity in the name of BEVCOMM and KMWB-TV. All these offers were rejected, but SBG did offer to reduce the fee from 25 to 15 cents per subscriber. This "counter-offer" was rejected. SBG then asked for a formal proposal on the terms and conditions that I had previously offered, and I sent all the terms to them again. They were again rejected, and BEVCOMM was accused of acting in bad faith. Needless to say, negotiations ceased, and we launched our service in late December 2004 without KMWB-TV in our channel lineup. If another WB affiliate were available, we would certainly have looked for such an alternative, but none is available to us, as we receive all our network signals through a jointly owned head end with several other companies. There is no alternative WB affiliate readily available in the DMA.

### **Why we support ACA's Petition**

Basically, all that ACA asks for is a right for us to shop and only when a broadcaster demands a price for retransmission consent. In my markets, I know this will work to lower the cost of retransmission consent for my customers.

First, I know that I could obtain network programming at a lower cost from other broadcasters, if it were available. I can do this by receiving signals from neighboring markets or via network satellite if we chose to make such a sizeable investment.

Second, if the broadcasters in my market know alternatives exist, I am confident I will be able to negotiate a lower price. That works in every type of transaction, and it will work in retransmission consent.

As stated in the petition, the problem is not that broadcasters demand a “price” for retransmission consent. The problem is that they block our ability to find lower-cost alternatives. The petition shows how this problem will easily cost consumers and smaller cable operators upwards of \$1 billion next year. In my market, SBC’s demand will cost my company and our subscribers at least \$5,400 per year, given our Most Favored Nations clauses with other network affiliates.

By making the limited changes requested by ACA, the Commission will bring some market discipline to retransmission consent “pricing.” This will help to keep our costs down and will benefit our consumers.

Since BEVCOMM has no other WB alternative, we have been placed at a competitive disadvantage. All we ask is that we be treated the same as our competitor and other cable operations in the DMA.

### **Our concern for localism**

As a final point, I want the Commission to know that we support local broadcasting and prefer to carry our local broadcasters. We currently provide 24 hours of local programming on our cable system. We understand the importance of local programming, but we also understand how much our customers are willing to pay for it. The problem is the higher prices being demanded by more and more owners of these stations. Most often the owners are based in corporate headquarters hundreds or thousands of miles away. Frankly, they don’t care about localism. They just want our customers’ money.

We fully support a fair exchange of value for carriage of local signals. But when broadcasters demand a “price,” we need the ability to “shop” to get a “price” that fairly reflects the value of the signal, based upon ***local market conditions***. Please act on ACA’s Petition as soon as you can.

Sincerely,

\_\_\_\_\_/s/\_\_\_\_\_  
James L. Beattie  
Assistant General Counsel